IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7819 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANKARBHAI BHIKHALAL THAKKAR - Petitioner(s)

Versus

STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

MR MRUGEN K PUROHIT for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2, 5,
MR MM TIRMIZI for Respondent(s) : 3,
MR AMAR D MITHANI for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 16/12/2005

ORAL JUDGMENT

In the present petition, the petitioner has challenged the order dated 15th January 1999 passed by the District Collector, Patan as confirmed by an order dated

4.1.2000 passed by the Deputy Secretary, Revenue Department, Government of Gujarat.

2. Respondent No.3, Radanpur Municipal Borough had passed a resolution dated 17th December 1997 granting land admeasuring 22.50 sq. meters to the petitioner on certain terms and conditions. Some of the persons objecting such a grant appealed to the District Collector to take the resolution passed by the Municipal Borough in review. The District Collector, Patan in exercise of powers under section 258 of the Gujarat Municipalities Act by his order dated 15.1.99 permanently prohibited implementation of the resolution in question. The petitioner unsuccessfully appealed against the order passed by the Collector, but his revision application was rejected by the Deputy Secretary. The petitioner, therefore, filed the present petition challenging the above-mentioned orders passed by the authorities below.

3. During the pendency of the petition, certain developments took place which would have bearing on the outcome of the present petition. The petitioner therefore amended the petition and brought on record an order dated 17th April 2001 by which the Deputy Secretary

of the Government of Gujarat was pleased to remand the proceedings for reconsideration by the Collector in which under identical situation, the Collector had permanently prohibited implementation of the resolution of the Municipal borough. It was a case where the land was granted to private individual by the Municipal borough which land was adjacent to the petitioner with which the present petition is concerned. By an order dated 18.4.2002, the Collector, Patan reviewed his earlier decision and upheld the resolution passed by the Municipal borough regarding the grant of the land.

4. Learned advocate Shri Purohit appearing for the petitioner submitted that respondent Nos.4 & 5 herein who were earlier objecting to the grant of the land appeared to have lost interest. He submitted that respondent No.4 had filed a civil suit against the petitioner continuing with the construction on the land in question which was subsequently withdrawn. Learned advocate Shri Purohit also submitted that the Deputy Secretary had rejected the revision application filed by the petitioner primarily on the ground that the land granted to him is part of public road. He submitted that this was the situation in the parallel case in which the Deputy Secretary was pleased

to remand the proceedings and upon remand, the Collector upheld the resolution of the Municipality.

5. Having heard the learned advocate for the petitioner and the learned advocates appearing for the respective respondents, it would appear that under similar circumstances when the Deputy Secretary remanded the proceedings to the Collector for reconsideration, whether the land was actually found part of public road or not, the Collector upon reconsideration of the issues came to the conclusion hat the resolutions passed by the Municipal borough are required to be upheld. It appears that the land granted to the petitioner is similarly situated as in the above mentioned case and the learned advocate for the petitioner also submitted that the proceedings should be remanded to the Collector for reconsideration and for decision on merits.

6. Considering the facts and circumstances noted hereinabove, I find it appropriate to quash the orders passed by the Collector and the Deputy Secretary which are impugned in this petition and remand the proceedings to the Collector, Patan for reconsideration on merits with special focus on finding whether the land granted

to the petitioner is part of the public road or not. Such consideration may be concluded expeditiously and preferably within a period of four months from the date of receipt of a copy of this order. With these directions, the petition is disposed of. Rule is made absolute to the limited extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)